

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**JERRY NUTT
ADC #098540**

PETITIONER

v.

No. 5:19-cv-164-DPM

**DEXTER PAYNE, Director,
Arkansas Division of Correction**

RESPONDENT

ORDER

On *de novo* review, the Court adopts Magistrate Judge Deere's recommendation, *Doc. 22*, as modified and overrules Nutt's objections, *Doc. 23*. The modification: Because the Arkansas Court of Appeals found no deficient performance, it didn't address prejudice. *Nutt v. State*, 2020 Ark. App. 137, *7, 594 S.W.3d 907, 912. Any analysis of that issue by this Court would therefore have to be *de novo*, not deferential. *Rompilla v. Beard*, 545 U.S. 374, 390 (2005). This Court need not address prejudice, though, because the state court's handling of the deficient performance issue didn't amount to an unreasonable application of federal law or an unreasonable determination of the facts in the record. 28 U.S.C. § 2254(d). Nutt's petition will be dismissed with prejudice. No certificate of appealability will issue. 28 U.S.C. § 2253(c)(1)-(2).

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
United States District Judge

21 June 2021